

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2124**

1 On page 1 of the printed A-engrossed bill, delete line 3 and insert “cre-  
2 ating new provisions; amending ORS 676.185, 676.190 and 676.200; and de-  
3 claring an emergency.”.

4 Delete lines 5 through 25 and delete pages 2 and 3 and insert:

5 **“SECTION 1. ORS 676.185 is amended to read:**

6 **“676.185. As used in ORS 676.185 to 676.200:**

7 **“(1) ‘Direct supervisor’ means the individual who is responsible for:**

8 **“(a) Supervising a licensee enrolled in the impaired health profes-  
9 sional program;**

10 **“(b) Monitoring the licensee’s compliance with the requirements of  
11 the program; and**

12 **“(c) Periodically reporting to the program on the licensee’s com-  
13 pliance with the requirements of the program.**

14 **“[(1)] (2) ‘Health profession licensing board’ means:**

15 **“(a) A health professional regulatory board as defined in ORS 676.160; or**

16 **“(b) The Oregon Health Licensing Agency for a board, council or program  
17 listed in ORS 676.606.**

18 **“[(2)] (3) ‘Impaired professional’ means a licensee who is unable to prac-  
19 tice with professional skill and safety by reason of habitual or excessive use  
20 or abuse of drugs, alcohol or other substances that impair ability or by rea-  
21 son of a mental health disorder.**

22 **“[(3)] (4) ‘Licensee’ means a health professional licensed or certified by**

1 or registered with a health profession licensing board.

2 “(5) ‘Substantial noncompliance’ includes the following:

3 “(a) Criminal behavior;

4 “(b) Conduct that causes injury, death or harm to the public, or a  
5 patient, including sexual impropriety with a patient;

6 “(c) Impairment in a health care setting in the course of employ-  
7 ment;

8 “(d) A positive toxicology test result as determined by federal reg-  
9 ulations pertaining to drug testing;

10 “(e) Violation of a restriction on a licensee’s practice imposed by  
11 the impaired health professional program established under ORS  
12 676.190 or the licensee’s health profession licensing board;

13 “(f) Civil commitment for mental illness;

14 “(g) Failure to participate in the program after entering into a di-  
15 version agreement under ORS 676.190; or

16 “(h) Failure to enroll in the program after being referred to the  
17 program.

18 “SECTION 2. ORS 676.190, as amended by section 1, chapter 2, Oregon  
19 Laws 2012, is amended to read:

20 “676.190. (1) The Oregon Health Authority shall establish or contract to  
21 establish an impaired health professional program. The program must:

22 “(a) Enroll licensees of participating health profession licensing boards  
23 who have been diagnosed with alcohol or substance abuse or a mental health  
24 disorder;

25 “(b) Require that a licensee sign a written consent prior to enrollment in  
26 the program allowing disclosure and exchange of information between the  
27 program, the licensee’s board, the licensee’s employer, evaluators and treat-  
28 ment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

29 “(c) Enter into diversion agreements with enrolled licensees;

30 “[*d*] Assess and evaluate compliance with diversion agreements by enrolled

1 licensees;]

2 “[e) Assess the ability of an enrolled licensee’s employer to supervise the  
3 licensee and require an enrolled licensee’s employer to establish minimum  
4 training requirements for supervisors of enrolled licensees;]

5 **“(d) If the enrolled licensee has a direct supervisor, assess the  
6 ability of the direct supervisor to supervise the licensee, including an  
7 assessment of any documentation of the direct supervisor’s completion  
8 of specialized training;**

9 “[f) (e) Report substantial noncompliance with a diversion agreement to  
10 a noncompliant licensee’s board within one business day after the program  
11 learns of the substantial noncompliance[, including but not limited to infor-  
12 mation that a licensee:]; **and**

13 “[A) Engaged in criminal behavior;]

14 “[B) Engaged in conduct that caused injury, death or harm to the public,  
15 including engaging in sexual impropriety with a patient;]

16 “[C) Was impaired in a health care setting in the course of the licensee’s  
17 employment;]

18 “[D) Received a positive toxicology test result as determined by federal  
19 regulations pertaining to drug testing;]

20 “[E) Violated a restriction on the licensee’s practice imposed by the pro-  
21 gram or the licensee’s board;]

22 “[F) Was admitted to the hospital for mental illness or adjudged to be  
23 mentally incompetent;]

24 “[G) Entered into a diversion agreement, but failed to participate in the  
25 program; or]

26 “[H) Was referred to the program but failed to enroll in the program;  
27 and]

28 “[g) (f) At least weekly, submit to licensees’ boards:

29 “(A) A list of licensees who were referred to the program by a health  
30 profession licensing board and who are enrolled in the program; and

1 “(B) A list of licensees who were referred to the program by a health  
2 profession licensing board and who successfully complete the program.

3 “(2) The lists submitted under subsection [(1)(g)] **(1)(f)** of this section are  
4 exempt from disclosure as a public record under ORS 192.410 to 192.505.

5 “(3) When the program reports **substantial** noncompliance **under sub-**  
6 **section (1)(e) of this section** to a licensee’s board, the report must include:

7 “(a) A description of the **substantial** noncompliance;

8 “(b) A copy of a report from the independent third party who diagnosed  
9 the licensee under ORS 676.200 (2)(a) or subsection (6)(a) of this section  
10 stating the licensee’s diagnosis;

11 “(c) A copy of the licensee’s diversion agreement; and

12 “(d) The licensee’s employment status.

13 “(4) The program may not diagnose or treat licensees enrolled in the  
14 program.

15 “(5) The diversion agreement required by subsection (1) of this section  
16 must:

17 “(a) Require the licensee to consent to disclosure and exchange of infor-  
18 mation between the program, the licensee’s board, the licensee’s employer,  
19 evaluators and treatment **programs or** providers, in compliance with ORS  
20 179.505 and 42 C.F.R. part 2;

21 “(b) Require that the licensee comply continuously with the agreement for  
22 at least two years to successfully complete the program;

23 “(c) [*Based on an individualized assessment,*] Require that the licensee  
24 abstain from mind-altering or intoxicating substances or potentially  
25 addictive drugs, unless the drug is [*approved by the program and*]:

26 “(A) Prescribed for a documented medical condition by a person author-  
27 ized by law to prescribe the drug to the licensee; **and**

28 “(B) **Approved by the program if the licensee’s board has granted**  
29 **the program that authority;**

30 “(d) Require the licensee to report use of mind-altering or intoxicating

1 substances or potentially addictive drugs within 24 hours;

2 “(e) Require the licensee to agree to participate in a **recommended**  
3 treatment plan [*approved by a third party*];

4 “(f) Contain limits on the licensee’s practice of the licensee’s health pro-  
5 fession;

6 “[*g*] *Provide for employer monitoring of the licensee;*]

7 “[*h*] *Provide that the program may require an evaluation of the licensee’s*  
8 *fitness to practice before removing the limits on the licensee’s practice of the*  
9 *licensee’s health profession;*]

10 “[*i*] (**g**) Require the licensee to submit to random drug or alcohol testing  
11 in accordance with federal regulations, **unless the licensee is diagnosed**  
12 **with solely a mental health disorder and the licensee’s board does not**  
13 **otherwise require the licensee to submit to random drug or alcohol**  
14 **testing;**

15 “[*j*] (**h**) Require the licensee to report [*at least weekly*] to the program  
16 regarding the licensee’s compliance with the agreement;

17 “[*k*] (**i**) Require the licensee to report any arrest for or conviction of a  
18 misdemeanor or felony crime to the program within three business days after  
19 the licensee is arrested or convicted;

20 “[*L*] (**j**) Require the licensee to report applications for licensure in other  
21 states, changes in employment and changes in practice setting; and

22 “[*m*] (**k**) Provide that the licensee is responsible for the cost of evalu-  
23 ations, toxicology testing and treatment.

24 “(6)(a) **If a health profession licensing board participating in the**  
25 **program establishes by rule an option for self-referral to the program,**  
26 a licensee of [*a*] **the health profession licensing board** [*participating in the*  
27 *program*] may self-refer to the program.

28 “(b) The program shall require [*the*] **a licensee who self-refers to the**  
29 **program** to attest that the licensee is not, to the best of the licensee’s  
30 knowledge, under investigation by the licensee’s board. The program shall

1 enroll the licensee on the date on which the licensee attests that the  
2 licensee, to the best of the licensee's knowledge, is not under investigation  
3 by the licensee's board.

4 "(c) When a licensee self-refers to the program, the program shall:

5 "(A) Require that an independent third party approved by the licensee's  
6 board to evaluate alcohol or substance abuse or mental health disorders  
7 evaluate the licensee for alcohol or substance abuse or mental health disor-  
8 ders; and

9 "(B) Investigate to determine whether the licensee's practice while im-  
10 paired has presented or presents a danger to the public.

11 "(d) **When a licensee self-refers to the program**, the program may not  
12 report [*a self-referred*] **the** licensee's enrollment in or successful completion  
13 of the program to the licensee's board.

14 "(7) The authority shall adopt rules establishing a fee to be paid by the  
15 **health profession licensing** boards participating in the [*impaired health*  
16 *professional*] program for administration of the program.

17 "(8) The authority shall arrange for an independent third party to audit  
18 the program **every four years** to ensure compliance with program guide-  
19 lines. The authority shall report the results of the audit to the Legislative  
20 Assembly, the Governor and the health profession licensing boards. The re-  
21 port may not contain individually identifiable information about licensees.

22 "(9) The authority may adopt rules to carry out this section.

23 "**SECTION 3.** ORS 676.200, as amended by section 2, chapter 2, Oregon  
24 Laws 2012, is amended to read:

25 "676.200. (1)(a) A health profession licensing board that is authorized by  
26 law to take disciplinary action against licensees may adopt rules opting to  
27 participate in the impaired health professional program established under  
28 ORS 676.190 **and may contract with or designate one or more programs**  
29 **to deliver therapeutic services to its licensees.**

30 "(b) A board [*may only refer impaired professionals to the impaired health*

1 *professional program established under ORS 676.190 and]* may not establish  
2 the board's own impaired health professional program **for the purpose of**  
3 **monitoring licensees of the board that have been referred to the pro-**  
4 **gram.**

5 “(c) A board may adopt rules establishing additional requirements for  
6 licensees referred to the impaired health professional program established  
7 under ORS 676.190 **or a program with which the board has entered into**  
8 **a contract or designated to deliver therapeutic services under sub-**  
9 **section (1) of this section.**

10 “(2) If a board participates in the impaired health professional program,  
11 the board shall establish by rule a procedure for referring licensees to the  
12 program. The procedure must provide that, before the board refers a licensee  
13 to the program, the board shall ensure that:

14 “(a) An independent third party approved by the board to evaluate alcohol  
15 or substance abuse or mental health disorders has diagnosed the licensee  
16 with alcohol or substance abuse or a mental health disorder and provided the  
17 diagnosis and treatment options to the licensee and the board;

18 “(b) The board has investigated to determine whether the licensee's pro-  
19 fessional practice while impaired has presented or presents a danger to the  
20 public; and

21 “(c) The licensee has agreed to report any arrest for or conviction of a  
22 misdemeanor or felony crime to the board within three business days after  
23 the licensee is arrested or convicted.

24 “(3) A board that participates in the impaired health professional program  
25 shall [*investigate*] **review** reports received from the program. If the board  
26 finds that a licensee is substantially noncompliant with a diversion agree-  
27 ment entered into under ORS 676.190, the board may suspend, restrict, modify  
28 or revoke the licensee's license or end the licensee's participation in the  
29 impaired health professional program.

30 “(4) A board may not discipline a licensee solely because the licensee:

1       “(a) Self-refers to or participates in the impaired health professional pro-  
2 gram;

3       “(b) Has been diagnosed with alcohol or substance abuse or a mental  
4 health disorder; or

5       “(c) Used controlled substances before entry into the impaired health  
6 professional program, if the licensee did not practice while impaired.

7       **“SECTION 4. The amendments to ORS 676.190 (5) and (6) by section  
8 2 of this 2013 Act apply to:**

9       **“(1) Diversion agreements between licensees and the impaired  
10 health professional program entered into on or after the effective date  
11 of this 2013 Act; and**

12       **“(2) Licensees who self-refer to the impaired health professional  
13 program on or after the effective date of this 2013 Act.**

14       **“SECTION 5. This 2013 Act being necessary for the immediate  
15 preservation of the public peace, health and safety, an emergency is  
16 declared to exist, and this 2013 Act takes effect on its passage.”.**

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